Supreme Court of Michigan.

THE NIAGARA FIRE INSURANCE COMPANY *vs.* HENRY DE GRAFF.

Liquors, the sale of which is prohibited under a penalty, may still be insured.

Goods were insured under the designation of "groceries." As matter of fact, the stock included a small quantity of spirituous liquors kept for sale. A loss occurred, and an action being brought on the policy, the insured asked the court to charge the jury that, since the Prohibitory Liquor Law, the term "groceries," as used in referring to goods kept for sale, would not include liquors. *Held*, that the request was too broad, and that the question whether the liquors were insured under this term was properly left to the jury as one of fact.

A policy of insurance on "groceries" had annexed thereto a condition that if the premises were used for storing or keeping therein certain hazardous articles, among which were enumerated alcohol and spirituous liquors, "except as herein specially provided for, or hereafter agreed to by this corporation, in writing upon this policy," the policy should thereby be rendered of no effect. Alcohol and spirituous liquors were kept as a part of the stock, and it was *held* that if the jury found that the term "groceries," as used, included these articles, then, by the use of a term including them, they were "specially provided for in writing on the policy."

A verdict will not be set aside for inconsistent charges to the jury, if all those excepted to by the complaining party are correct.

C. A. Stacy and *C. J. Walker*, for plaintiffs in error.

A. L. Millerd and *T. M. Cooley*, for defendant in error.

The opinion of the court was delivered by

CAMPBELL, J.—Plaintiffs in error insured De Graff upon his stock of goods, described in his application as a "stock of dry goods, groceries, &c.," dividing the risk into specific sums on dry goods, groceries, hardware, and other things specifically mentioned. There was evidence tending to show that he had in his store a few bottles of spirituous liquors and a barrel of alcohol. Alcohol was among the articles mentioned in the second class of hazards in the second subdivision of extra hazards. Grocers' stocks generally were in the first subdivision of the same class.

[1] We are indebted for this case to the kindness of Mr. Cooley, the Reporter.

Bottled spirituous liquors were not classed as extra hazardous, but were included in the first class of ordinary hazards in the second division of hazardous. There was evidence tending to show that the insurance agent who drew up the application was informed of the presence of the liquors and alcohol, which was, however, denied by the agent. The property being destroyed, a suit was brought on the policy, and judgment was recovered. Error is brought on the rulings upon the trial.

The points taken refer mostly to a clause in the policy which declared that if the store should be used "for storing or keeping therein any articles, goods, or merchandise denominated hazardous, or extra hazardous, or specially hazardous in the second class of the classes of hazards annexed to this policy, except as herein specially provided for, or hereafter agreed to by this corporation, in writing upon this policy, from thenceforth so long as the same shall be so used, this policy shall be of no force or effect." There was a further clause annulling the policy whenever gunpowder or any other article subject to legal restriction should be kept in greater quantities or in a different manner than prescribed by law.

The court below refused to charge as requested, that, since the passage of the Prohibitory Liquor Law, alcohol and spirituous liquors are not included in the term "groceries," as used in referring to goods kept for sale; and charged that the question whether they were so included was one of fact for the jury. To this, exception is taken.

It was claimed on behalf of the plaintiff in error, that if these liquors can be allowed to be included in a policy, the policy will be, to all intents and purposes, insuring an illegal traffic; and several cases were cited involving marine policies on unlawful voyages and lottery insurances, which have been held void on that ground. These cases are not at all parallel, because they rest upon the fact that, in each instance, it is made a necessary condition of the policy that the illegal act shall be done. The ship being insured for a certain voyage, that voyage is the only one upon which the insurance would apply, and the underwriter be-

comes thus directly a party to an illegal act. So, insuring a lottery ticket requires the lottery to be drawn in order to attach the insurance to the risk. If this policy were in express terms a policy insuring the party selling liquors against loss by fine or forfeiture, it would be quite analogous. But this insurance attaches only to property, and the risks insured against are not the consequences of illegal acts, but of accident. Our statute does not in any way destroy or affect the right of property in spirituous liquors, or prevent title being transmitted, but renders sales unprofitable by preventing the vendor from availing himself of the ordinary advantages of a sale, and also affixes certain penalties: *Hibbard* vs. *People*, 4 Mich. 125; *Bagg* vs. *Jerome*, 7 Id. 145. If the owner sees fit to retain his property without selling it, or to transmit it into another state or country, he can do so. By insuring his property, the insurance company has no concern with the use he may make of it, and as it is susceptible of lawful uses, no one can be held to contract concerning it in an illegal manner, unless the contract itself is for a distinctly illegal purpose. Collateral contracts, in which no illegal design enters, are not affected by an illegal transaction with which they may be remotely connected. In the case of *The Ocean Ins. Co.* vs. *Palleys*, 13 Peters 157, an insurance upon a ship known by the insurance company to be liable to forfeiture under the registry laws of the United States, was held valid, and a recovery was permitted for a loss while sailing under papers known to be illegal. The case of *Armstrong* vs. *Toler*, 11 Wheaton 258, is still stronger. It is difficult to perceive how public policy can be violated by an insurance of any kind of property recognised to exist.

The question arises whether the court rightly left it to the jury to say, as a matter of fact, whether the term "groceries" included spirituous liquors and alcohol. That it may include them in the absence of such a statute is not denied, the recognised definitions embracing them clearly, so that it may be doubted whether it might not, in that case, require evidence of usage to exclude that meaning, if such articles existed in an insured stock of groceries. See *New York Equitable Insurance Company* vs. *Langdon*, 6 Wend. 623. There was evidence before the jury, in the case before us,

that these things did, in fact, form a part of the stock, and evidence tending to show a knowledge of that fact by the agent. The statute does not prohibit the sale of all kinds of liquors, but, as to some, carefully recognises the right in every one. Whatever may be the *presumption* under our present statute as to the extent of the term "groceries"—a question not raised in the case, and upon which, therefore, it would be improper to pass—we think the instruction asked was altogether too broad, in claiming that alcohol and other liquors could not possibly be included. The question was properly left to the jury.

If the jury found (as this verdict shows they must have done) that the term "groceries" included the liquors in question, then the other instructions complained of, which held that, by insuring such a stock, the liquors were embraced, although extra hazardous, were clearly correct. By the use of a term including them, they are "*specially provided for in writing on the policy.*" Insuring a class of goods includes what is usually contained in it, whether extra hazardous or not. See *Bryant* vs. *Poughkeepsie Mutual Ins. Co.*, 17 N. Y. 200; *Harper* vs. *Albany Mutual Ins. Co.*, 17 Id. 194; *Harper* vs. *N. Y. City Ins. Co.*, 22 Id. 441; *Delonguemere* vs. *The Tradesmen's Ins. Co.*, 2 Hall 589. In these instructions, the jury were directed to include the articles only if satisfied that they were commonly kept and sold as part of a grocer's stock. This qualification was sufficiently broad to prevent any improper influences.

Our attention has been called to the fact that the other charges given on the one side and refused on the other, are inconsistent with those complained of. So far as this is the case, however, they favored the plaintiffs in error, those excepted to being the only ones which could damnify them. Had the verdict been for them, the discrepancies would have been more important in determining the rights of the other party. The question whether the jury did not find against evidence, or perversely, could only be presented in the Circuit Court.

The judgment below must be affirmed.

MANNING and CHRISTIANCY, JJ., concurred.

MARTIN, C. J., was absent.